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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
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In the Matter of)

Policies and Rules)

Governing Interstate Pay-Per-Call)
and Other Information Services Pursuant to)
the Telecommunications Act of 1996)

CC Docket No. 96-146

REPLY COMMENTS OF AT&T CORP.

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September 16, 1996

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SUMMARY

Virtually all of the commenters in this proceeding agree with the Commission's finding that § 228 represents a congressional mandate to provide additional protection for consumers from abusive or misleading practices by information providers ("IPs"). Apart from a few IPs that make an aggressive attempt to preserve their current practices, the commenters generally agree with the Commission's proposals, but suggest certain clarifications and modifications.

AT&T and the majority of the commenters conclude that the Commission does have the authority to impose restrictions on shared-compensation arrangements between carriers and IPs or entities advertising an information service. However, most of the parties participating in this proceeding agree that the "per se" ban proposed in the NPRM would sweep too broadly, potentially prohibiting economically beneficial arrangements as well as abuses. A few commenters contend that the sole measure of whether a call is a "pay-per-call" service should be the amount paid by callers, but such a standard would endorse several scams that have already emerged, and would not be consistent with congressional intent. To avoid these pitfalls, the Commission should adopt the "rebuttable presumption" standard AT&T proposed in its comments.

Some commenters argue that the Commission's proposed standards for written presubscription arrangements and credit or calling card billing would exceed its authority. However, AT&T and the majority of commenters support the NPRM's general approach to these matters, although the Commission should modify or clarify its proposals in several respects.

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CC Docket No. 96-146

REPLY COMMENTS OF AT&T CORP.

Pursuant to Section 1.415 of the Commission's Rules and its Order and Notice of Proposed Rulemaking released July 11, 1996 ("NPRM"), AT&T Corp. ("AT&T") submits these reply comments on the policies and regulations that should be adopted to implement 47 U.S.C. § 228 ("§ 228").

Virtually all of the commenters in this proceeding agree with the Commission's finding that § 228 represents a congressional mandate to provide additional protection for consumers from abusive or misleading practices by information providers ("IPs"). A broad array of parties also joined AT&T in urging the Commission to be vigilant for evidence of new scams, as unscrupulous IPs have repeatedly shown a willingness to modify their practices in an effort to exploit potential regulatory loopholes.¹

Apart from a few IPs that make an aggressive attempt to preserve their current practices, the commenters generally agree with the Commission's proposals, but suggest certain

¹ See, e.g., AT&T, p. 2; GTE, p. 2; NAAG p. 2; Pac.Bell, p. 2.

clarifications and modifications. The comments can be divided into three categories: those addressing the NPRM's proposed ban on remuneration between carriers, IPs and entities advertising an information service; those concerning § 228's written presubscription and calling card billing requirements; and those dealing with other aspects of the NPRM.

I. THE COMMISSION HAS AUTHORITY TO PROHIBIT REMUNERATION FROM OR BETWEEN CARRIERS AND IPs, BUT SUCH ARRANGEMENTS SHOULD CREATE ONLY A REBUTTABLE PRESUMPTION THAT § 271 HAS BEEN VIOLATED

The NPRM proposes that "any form of remuneration" from a carrier to an IP or entity advertising an information service, or "any reciprocal arrangement between such entities" should serve as per se evidence that the charge levied for an interstate call to an IP "exceeds the charge for transmission," and that the call must therefore be offered via a 900 number.² Although AT&T endorses the aim of this proposal, which is to prohibit abuses, it believes that in its present form the proposed rule is overbroad and could prohibit economically beneficial arrangements as well.³

The Commission's prior guidance on the subject of compensation-sharing arrangements between IPs and carriers makes plain that the problem to be addressed is not the simple existence of remuneration, but arrangements in which a carrier "acquire[s] an interest in promoting the delivery of calls to a particular number for the provision of a particular communication," because to do so would be inconsistent with its duties as a common carrier.⁴

² NPRM, ¶ 48.

³ See AT&T, pp. 5-7.

⁴ Letter from John B. Muleta, Chief, Enforcement Division, Common Carrier Bureau, to Ronald J. Marlowe, 10 FCC Rcd. 10945 (1995).

Thus, almost all of the commenters that address the proposed remuneration ban agree that a per se prohibition would sweep too broadly.⁵ Most of these commenters cite AT&T's Terminating Switched Access Arrangements ("TSAAs") as an example of a practice that would potentially violate the proposed standard; but which does not implicate the concerns the NPRM seeks to address.⁶

On the other hand, a few commenters contend that the Commission lacks the authority to prohibit compensation-sharing arrangements for non-900 calls that do not cause callers to pay more than for a comparable call to a non-IP.⁷ That interpretation is plainly incorrect, as the charges a caller pays cannot reasonably be deemed the only test of whether a call should be treated as pay-per-call. Section 228(i)(1)(B) defines "pay-per-call" as those services for which a "caller" pays a charge that is greater than the charge for completion of his or her call. However, it would be patently unreasonable to assume that by using this phrasing Congress intended to tie the Commission's hands, preventing it from taking any action to stop unscrupulous IPs from simply shifting charges from callers to IXC's. Indeed, to accept such a test would endorse several scams that have already emerged, and that work to the detriment of consumers and carriers alike.

As AT&T explained in its comments, it has recently been victimized by schemes in which LECs or entities purporting to be CAPs -- including some of the commenters who question the Commission's authority -- impose inflated "access" charges for calls to certain IPs,

⁵ See AT&T, p. 5; HFT, p. 5; DMA, p. 2; TSIA, pp. 17-18; ISA, pp. 3, 7 n.10; Pilgrim, p. 10.

⁶ See AT&T, pp. 5-7; HFT, p. 5; TSIA, pp. 17-18; ISA, pp. 3, 7 n.10; Pilgrim, p. 10.

⁷ See DMA, pp. 4-5; HFT, p. 5; ISA, p. 2; TSIA, p. 18; Total, p. 3.

and then share a portion of these revenues with those information providers.⁸ In many cases, these bogus “access” revenues standing alone exceed the IXC’s total revenues for the call. Scams such as these are transparent to callers, as their bills reflect only ordinary long distance charges. However, to claim that these information services are “free” simply blinks reality.

Playing shell games that shift the costs of information services from callers to other entities does not make these services cost-free for end users. Because these scams increase IXCs’ costs, they ultimately cause consumers to bear higher charges for all long distance calls. Indeed, although one of the commenters, Total Telecommunications Services, boasts that “the fact that carriers are willing to provide information services to the public without imposing premium charges upon callers should be a source of considerable satisfaction,”⁹ it has admitted bluntly in other fora that its “free” services will lead to higher long distance rates. In a proceeding in federal district court in which it was represented by the same counsel that drafted its comments, the company argued that in order to pay Total’s inflated “access” charges, AT&T could simply “charge higher rates to its customers who make telephone calls to [Total’s numbers].”¹⁰ Total offered the same argument in another, similar case, contending that AT&T should simply pass through Total’s charges via higher long distance rates: “If they don’t think their rate is high enough, raise their rate. They can certainly do that.”¹¹

⁸ AT&T, pp. 7-8.

⁹ Total, p. 6.

¹⁰ Plaintiff’s Memorandum of Points and Authorities In Support Of Motion For Preliminary Injunctive Relief, in Total Telecommunications Services v. AT&T, No. 1-95CV02273, at n.25 (D.D.C., filed Dec. 29, 1995) (excerpt attached as Exhibit A).

¹¹ Transcript of proceedings in Total Telecom Service v. AT&T, No. 95-C-1163, at 65 (D. Okla., Nov. 28, 1995) (excerpt attached as Exhibit B).

Callers to ostensibly “free” information services are also denied the benefit of the disclosures Congress ordered in § 228 and other statutes regulating pay-per-call services. In addition, consumers cannot block such calls (because they are offered via ordinary long distance calling sequences) despite the fact that they can be accessed without presenting a credit card number or obtaining a written presubscription, and so are readily accessible to children.¹²

Moreover, it is a basic principle of economics that when the consumers of a resource do not bear the full costs of using it, they will use greater quantities than is economically efficient. In the case of these bogus “access” charge scams, callers will be almost completely insensitive to the charges levied against IXC’s, because the callers only indirectly bear those charges. Thus, permitting IPs to shift the costs of their services to IXC’s will result in higher call volumes than would be observed if callers had to pay for these services themselves, because these information services appear to be “free.” These scams therefore are likely to proliferate, as they potentially will be more profitable for IPs than offerings for which users must pay directly. Ultimately, however, the costs of these “free” calls will inevitably be passed on to consumers of ordinary long distance services.¹³

The burden should be on the parties claiming to employ such arrangements to demonstrate that they have worked out revenue-sharing schemes that permit them to offer

¹² The 900 blocking option was enacted to give “consumers a measure of control over their exposure, and the exposure of children especially.” Policy and Rules Concerning Interstate Telecommunications Services, 6 FCC Rcd. 6166, 6174 (1991).

¹³ Even if the Commission were to conclude that it lacks the power under § 228 to prohibit schemes in which LECs or CAPs share inflated access revenues with IPs, such practices should be deemed an unjust and unreasonable practice under 47 U.S.C. § 201(b). The Commission previously has concluded that improper revenue sharing arrangements between IPs and IXC’s violate this provision. See Letter to Ronald J. Marlowe, supra note 4.

information services without charging a premium to callers, and without forcing other entities to pay for these services indirectly.¹⁴ There appears to be no reason to prohibit such innocuous (and presumably efficient) arrangements under § 228, assuming callers are fully informed of what the actual charges for these calls will be.¹⁵

In its comments, AT&T suggested the following standard be used for the Commission's proposed remuneration ban:

[A]ny flow of remuneration from a carrier (including LECs and CAPs, as well as IXC's) to an IP or party advertising an information service, or a reciprocal arrangement between those entities, should create only a rebuttable presumption that § 228 has been violated. A party accused of a violation could meet its burden of proof by demonstrating that it had not "acquire[d] an interest in promoting the delivery of calls to a particular number" -- for example, by showing that it was simply passing along a portion of its own cost savings achieved through a mutually beneficial arrangement, by demonstrating that its transaction with an IP is not materially different from similar arrangements it has made with non-IPs, or by demonstrating that its payments to an IP properly reflect the cost or value of services actually provided to the carrier.¹⁶

This standard permits parties to make economically efficient arrangements, but does not allow them to offer purportedly free information services that in reality charge callers higher-than-normal rates and then make side-payments to the IP involved, or simply shift charges to a party other than the caller.

¹⁴ Representative Bart Gordon appears to have such arrangements in mind when he comments that he does not oppose information service offerings via 011- international access when "there is no surcharge or premium paid by consumers." Rep. Gordon Letter, p. 2. However, there is no indication that Representative Gordon would endorse the inflated access charge scams AT&T described, or that he favors any scheme in which IPs provide "free" services simply by shifting costs to other parties.

¹⁵ The FTC proposes that all calls to IPs which are "billed merely upon connection and reference to ANI" be deemed pay-per-call. FTC, p. 8. This definition would appear to prohibit IPs from offering information services for which there is no charge other than that which would be assessed for a comparable call to a non-IP.

¹⁶ AT&T, p. 9.

Several commenters complain that the Commission's proposed ban on compensation-sharing would force them to utilize 900 numbers for their information services, and present a litany of reasons why the 900 NPA is less desirable than the numbers they currently use.¹⁷ These parties' complaints are irrelevant to the consumer protection measures required by §228 for two reasons: First, whatever these parties' opinions of the relative merits of 900 numbers versus the NPAs they currently employ, Congress has crafted an explicit definition of "pay-per-call," and has ordered that all calls meeting that definition be accessed via 900 numbers. Section 228(i) expressly provides that when the charge for completion of a call exceeds the charge for transmission of a comparable call that does not deliver an information service, that call is a "pay-per-call service."

Second, it is simply false to argue that any of the services these parties wish to provide must be offered exclusively via 900 numbers. Section 228 expressly permits IPs to utilize written presubscriptions, or to bill by credit or calling card -- and these options may be offered over any Service Access Code. Complying with § 228 may require some IPs to restructure their offerings in certain respects, but that is precisely what Congress intended.

II. THE NPRM'S WRITTEN PRESUBSCRIPTION AND CALLING CARD PROPOSALS SHOULD BE CLARIFIED IN SEVERAL RESPECTS

The commenters generally support the Commission's proposed requirement that all presubscription agreements be in writing.¹⁸ The chief area of disagreement concerns whether a customer must actually sign a presubscription agreement.¹⁹ AT&T believes that the plain language

¹⁷ See TSIA, p. 20; HFT, p. 4; ISA, p. 4; Total, pp. 19-20.

¹⁸ See, e.g., AT&T, p. 4; MCI, p. 4; NAAG, p. 10; Cal. PUC, p. 3; TSIA, pp. 3-4.

¹⁹ E.g., compare Pilgrim, pp. 13-14 with NAAG, pp. 10-11.

of § 228 compels the conclusion that a signature is not required.²⁰ Section 228(c)(7)(C)(i) provides that a “written agreement” for presubscription may be transmitted “through [an] electronic medium.” Although § 228 does require that a customer receive specific written disclosures, Congress expressly permitted those disclosures to be made by means such as facsimile or electronic mail.²¹ However, to provide additional protection for consumers, the Commission should adopt the NPRM’s proposals that presubscription agreements may only be executed by a competent adult, and that a caller may not bind the subscriber to an originating line to a contract to which the subscriber has not consented.²²

Few commenters address the NPRM’s proposed requirements for calling, credit, debit or charge cards (“cards”).²³ The sole dissenter from the proposal, Pilgrim Telephone, takes issue with the Commission’s proposal to require delivery of an “actual” card. However, adoption of Pilgrim’s position would render the statute’s card requirement superfluous. Although § 228 defines a “card” as simply an identifying code, it makes no sense to interpret Congress’ cure for abuses growing out of “instant” card scams as enshrining those practices.

²⁰ The NPRM tentatively reaches this same conclusion, as does the FTC. NPRM, ¶ 42; FTC, p. 7 n.12.

²¹ Because the laws governing electronic commerce are still developing, an IP that chose to permit its customers to execute a written presubscription electronically might face difficult issues of proof if that customer later disputed that it had received and assented to the required disclosures. In addition, if an IP elects to use electronic presubscription, then carriers investigating customer complaints pursuant to § 228(c)(8)(E) may be unable to verify satisfactorily that the IP has complied with applicable laws, and may find it necessary to terminate service to that IP. However, § 228 does permit IPs to opt for electronic transactions.

²² NPRM, ¶¶ 42, 44; see also AT&T, pp. 4-5.

²³ See AT&T, pp. 2-3 and MCI, p. 4 (supporting NPRM’s proposals); Pilgrim, pp. 14-19 (opposing NPRM’s proposals).

As AT&T stated in its comments, the Commission should prohibit IPs from issuing instant cards -- that is, from assessing charges for information services as part of the same call or electronic transmission in which a card is issued.²⁴ Further, AT&T endorses the NPRM's proposal to require delivery of an "actual" card -- that is, of some writing confirming that a card has been issued, either by mail or through electronic means. However, during the interval between issuance of a card and the receipt of written confirmation, the Commission should permit IPs to assume the risk of providing services to customers that might later claim, upon receiving written notice, that they had not in fact requested a card. Such a practice would conform to the procedures many merchants use for issuing credit, as customers often are permitted to make purchases prior to receiving actual cards.²⁵

Pilgrim also complains that IPs will be unable to determine whether a calling card has in fact been delivered to a caller.²⁶ AT&T does not believe that there is any need for the Commission to amend its proposal to account for this issue. "Delivery" of a card need not require that caller obtain an actual piece of plastic or cardboard, merely that he or she receive written confirmation of the issuance of a unique identifying code that can be used to charge information services. If some reputable issuers of cards do not currently deliver such confirmations to their

²⁴ AT&T, p. 3.

²⁵ Pilgrim argues (without evidentiary support) that AT&T and various BOCs sometimes issue "instant" calling cards. Pilgrim, p. 16. This observation is irrelevant, however, to the extent such cards are used to pay for ordinary telephone service, as opposed to information services, because only the latter are covered by § 228. Equally irrelevant is Pilgrim's unsupported assertion that some of these carriers rely on ANI as an "element in the card issuance process." *Id.* The NPRM proposes to prohibit the use of cards that "assess charges through ANI;" it does not proscribe the use of ANI, *e.g.*, to verify information concerning the phone number from which a customer is calling.

²⁶ Pilgrim, p. 24.

card holders, they will presumably begin to do so if the Commission requires it. If an IP has reason to believe that a caller's card was issued in a manner that may not have complied with applicable law, then the IP should refuse to honor that card.²⁷

III. THE COMMISSION SHOULD REJECT THE ADDITIONAL PROPOSALS OFFERED BY COMMENTERS

Several other issues raised by commenters merit brief mention. First, a few parties contend that the Commission's proposals somehow implicate grave First Amendment concerns.²⁸ These commenters state the truism that indecent communications are protected by the First Amendment, and then insinuate -- without offering evidence of any kind -- that the proposed regulations are a content-based restriction that targets indecency. This argument is as unpersuasive as it is unsupported. On its face, § 228 applies equally to all types of information services, without regard to their content.

The NAAG proposes that the Commission require carriers to provide telephone subscribers with the ability to block all calls to information services, or to prevent all charges for information services from appearing on their bills.²⁹ However, because § 228 expressly permits such services to be offered via other NPAs, including 800 numbers, carriers have no means to

²⁷ One step toward smoothing information services transactions in areas such as credit card billing would be to encourage greater standardization in the industry regarding such matters. AT&T endorses the Interactive Services Association's suggestion that the Industry Open Billing Forum develop standardized billing practices that conform to § 228 and other applicable statutes, to the extent that such cooperation is permitted by law. See ISA, p. 9.

²⁸ See HFT, pp. 8-9; Pilgrim, pp. 3-5; Total, pp. 13-16.

²⁹ NAAG, pp. 11-12. The NAAG's proposal literally suggests a block of all "pay-per-call" services. However, § 228 requires all pay-per-call services to be offered via 900 numbers, and carriers are already required to offer 900 blocking.

ascertain before the fact whether a call to a number other than a 900 number is destined for an information service. Accordingly, it is not technically possible to block all such calls.³⁰

The great majority of commenters support the NPRM's proposed ban on billing for calls to information services based on ANI, except calls using TDDs.³¹ The chief party to oppose the ban, the TSIA, appears to misinterpret the Commission's proposal. For example, the TSIA argues that AT&T "utilize[s] ANI for billing" collect calls through 800 CALL ATT.³² AT&T does not bill collect calls to the ANI of the line from which the call is originated. Rather, AT&T uses ANI for these calls solely for rating and related functions. These obviously are not the types of practices that the NPRM proposes to eliminate. The TSIA also protests that use of ANI should be permissible to "record and bill the details of the call" when a caller utilizes a PIN that restricts his or her access to a particular called-from number.³³ However, in such cases, the called number would have to be either offered via 900 or pursuant to a written presubscription,³⁴ or else the PIN would be required to satisfy § 228's requirements for credit or calling cards. In any of these scenarios, the NPRM's proposal does not appear to proscribe the use of ANI in the manner the TSIA suggests.

³⁰ See FTC, p. 12.

³¹ See AT&T, pp. 3-4; Fla. PSC, p. 5; GTE, p. 3; MCI, p. 5; NAAG, p. 8; Pac. Bell, p. 9.

³² TSIA, p. 14.

³³ Id., p. 15.

³⁴ The FTC suggests that the Commission's proposal would prohibit "ANI billing for presubscribed information services." FTC, p. 8. However, if an IP has a valid written presubscription authorized by the subscriber to the called-from line, then to prohibit ANI billing would not serve the purposes of § 228.

Finally, Excel argues that when a reseller is unable to collect from an IP because the IP has violated § 228, the reseller should not be required to pay the IXC that provided interexchange services for resale.³⁵ This proposal should be rejected. A reseller is in a far better position to police the practices of its own customers than is an IXC, which has no contact with them. Further, resellers assume the risk of nonpayment by their customers for ordinary defaults; Excel offers no reason to adopt a different practice for IPs. Most importantly, Excel's proposal would undermine the very purposes of § 228 by making abusive practices by IPs even more common. If resellers were relieved of all financial risk for the practices of their IP customers, they would have no incentive to police these customers' compliance with the law.

³⁵ Excel, pp. 1-6.

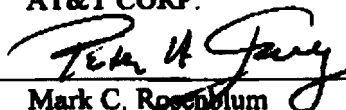
CONCLUSION

For the reasons stated above and in AT&T's comments, the Commission's proposed regulations implementing § 228 of the Telecommunications Act of 1996 should be modified or clarified prior to adoption.

Respectfully submitted,

AT&T CORP.

By



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September 16, 1996

LIST OF COMMENTERS
CC Docket 96-146

Alliance of Young Families
AT&T Corp. ("AT&T")
Commonwealth of The Northern Mariana Islands
Direct Marketing Association ("DMA")
Excel Telecommunications, Inc. ("Excel")
Andrew Egendorf
Florida Public Service Commission ("Fla. PSC")
GTE Service Corporation
Hon. Bart Gordon, House of Representatives, 4th District, Tennessee
HFT, Inc., LO-AD Communications, Corp. and
 American International Communications, Inc. ("HFT")
Interactive Services Association ("ISA")
International Telemedia Association
MCI Telecommunications Corporation
National Association of Attorneys General Telecommunications Subcommittee ("NAAG")
Pacific Bell and Nevada Bell ("Pac.Bell")
People of the State of California and The Public Utilities Commission
 of the State of California ("Cal. PUC")
Pilgrim Telephone, Inc. ("Pilgrim")
Public Utilities Commission of Ohio
Southwestern Bell Telephone Company
Teleservices Industry Association ("TSIA")
Total Telecommunications Services, Inc., SaMComm, Inc. and
 Big Sky Teleconferencing, Ltd. ("Total")
United States Telephone Association

AT&T Exhibit A

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

TOTAL TELECOMMUNICATIONS
SERVICES, INC., an Oklahoma
corporation,

Plaintiff,

v.

AMERICAN TELEPHONE &
TELEGRAPH COMPANY,

Defendant.

Civil Action
No. 1:95CVO2273 (RMU)

MEMORANDUM OF POINTS AND AUTHORITIES
IN SUPPORT OF MOTION FOR PRELIMINARY INJUNCTIVE RELIEF

OVERVIEW AND ISSUES PRESENTED

On November 22, 1995, American Telephone and Telegraph Company ("AT&T") unlawfully terminated long distance telephone service between all of its long distance subscribers and the end user of Total Telecommunications Services, Inc. ("TTS"), a competitive local exchange carrier^{1/} located in Big Cabin, Oklahoma. Prior to this action, TTS had provided terminating access service to AT&T and had carried over 15 million minutes of telephone traffic over facilities provided by TTS between August 1, 1995 and November 21, 1995. AT&T's precipitous action threatens TTS's survival as an on-going business.

^{1/} A Competitive Local Exchange Carrier (known in the industry as a "CLEC") typically offers all or some of the functionalities of a traditional local exchange carrier, ("LEC"). In this case, TTS offers only terminating services, but no originating services.

Id.

TTS submits that this case presents a compelling case for application of the standard embraced in Holiday Tours. The balance of hardship tips decidedly in favor of TTS. TTS will suffer direct, immediate, and grave injury; its existence will be threatened if not extinguished. Conversely, the harm to AT&T in permitting its customers to make long distance phone calls to the numbers of their choice at most is de minimis.^{21/}

While TTS contends that the legal issues are straightforward, the issues are, at the very least, serious and substantial questions that affect not only the private rights of TTS, but also the rights of similar entrants seeking to penetrate the market, and the public at large, which has an interest in assuring that no interexchange carrier will have the power to make decisions as to which local access companies will be permitted to terminate calls.

Accordingly, under the standard of Holiday Tours, a sufficient showing has been made to justify injunctive relief.

II. TTS HAS A SUBSTANTIAL LIKELIHOOD OF SUCCESS ON THE MERITS. AT&T'S TERMINATION OF SERVICE AND REFUSAL TO FURNISH SERVICE UPON REASONABLE REQUEST IS A VIOLATION OF SECTION 201 OF THE ACT.

A. AT&T Is Under an Affirmative Duty Under Section 201 to Furnish Communication Service Upon Reasonable Request.

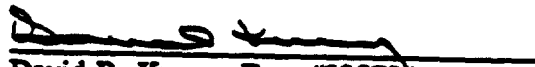
TTS's essential position is that AT&T is under an affirmative duty to provide communication services to its customers, to TTS, and to TTS's end users pursuant to § 201(a)

^{21/} AT&T has previously argued that because of TTS's tariff, it is losing money on calls. AT&T however has been granted authority by the FCC to raise its rates with one day notice. Moreover, under FCC Docket No. 95-427, AT&T was granted non-dominant carrier status and AT&T may charge higher rates to its customers who make telephone calls to telephone numbers which are completed by new entrants to the market such as TTS.


CONCLUSION

For the foregoing reasons, TTS respectfully requests that this Court enter a preliminary injunction against AT&T, enjoining it from taking any action to block access between its customers and TTS's end users, and for such further relief as the Court may deem just and appropriate.

Respectfully submitted,


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AT&T Exhibit B

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

TOTAL TELECOM SERVICE,

Plaintiff,

vs.

AT&T,

Defendant.

No. 95-C-1163

Transcript of the proceedings taken on
the 28th day of November, 1995, before the
Honorable H. Dale Cook, Tulsa, Oklahoma, reported
by Nikki P. Jones, Certified Shorthand Reporter in
and for the State of Oklahoma.

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1 happy, and anxious to do that. We are here only for
2 the TRO. And it gets down to this: What good does
3 all that do if we're not in business because they
4 can pull the plug during the meanwhile?

5 And we just think we've made ample case,
6 Your Honor, a good case here that they can't go out
7 and just pull the plug. They should go to the FCC
8 themselves and seek remedy rather than just taking
9 this sort of action, pulling the plug. The fact
10 that they order or don't order from other companies
11 who are in a different business, who have
12 originating calls and incoming calls, is irrelevant
13 to this proceeding.

14 Pulling the plug, putting this company out
15 of business is what we're here about. And we just
16 ask--they've already said they're not going to pay
17 the bills. So certainly the harm for Total is
18 great. It's ultimate. For AT&T, it is nothing.
19 And they are saying that they don't want to have to
20 continue to collect money from their customers for
21 calls coming into our service. They're collecting
22 money from their customers.

23 If they don't think their rate is high
24 enough, raise their rate. They can certainly do
25 that. But it seems to me a specious argument to say

1 that the more shoes we sell, the more we're going to
2 lose, so we don't want to continue selling shoes.
3 Well, they should price the shoes at an appropriate
4 price. It's the same on long-distance telephone
5 service.

6 We just say they are continuing to charge
7 their customers for calls coming in to our service.
8 They're just blocking the completion of them. We're
9 saying, Your Honor, during the meanwhile, while the
10 issue is being decided on its merits, order that
11 they stop that blocking, and let us have a trial on
12 the merits on the issues before the appropriate
13 agency. Thank you.

14 THE COURT: Anything further you want to
15 say, Mr. Kincaid?

16 MR. KINCAID: Just a brief comment, Your
17 Honor. We would like to move the admission, please,
18 of the affidavits of Ms. Lynn Patten and the
19 affidavit of Mr. Daniel C. Heller in response to the
20 evidence presented by the plaintiff in this action.
21 These affidavits are attached to the petition and
22 have been filed separately as well.

23 THE COURT: Yes, I understand. The names
24 are what?

25 MR. KINCAID: The affidavit of Daniel C.